

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
Council Chambers – 100 Civic Center Drive, Newport Beach, CA
Wednesday, January 8, 2020
6:30 PM

1) CALL MEETING TO ORDER

The meeting was called to order at 6:30 p.m.

2) ROLL CALL

Commissioners: Paul Blank, Chair
Scott Cunningham, Vice Chair
Ira Beer, Secretary (excused absence)
William Kenney, Jr., Commissioner
Marie Marston, Commissioner
Steve Scully, Commissioner
Don Yahn, Commissioner

Staff Members: Carol Jacobs, Assistant City Manager
Kurt Borsting, Harbormaster
Chris Miller, Public Works Administrative Manager
John Kappeler, Senior Engineer
Jennifer Biddle, Administrative Support Specialist

3) PLEDGE OF ALLEGIANCE – Vice Chair Cunningham

4) PUBLIC COMMENTS

Hein Austin noted the movement to limit the amount of copper in paint to no more than 0.5 percent and wanted to know the amount of copper contained in Harbor waters. He suggested reducing the frequency that boats are washed to reduce the amount of copper in Harbor waters, if necessary, and the Harbor Commission reconsider the Municipal Code provision that prohibits marine growth on boats.

5) APPROVAL OF MINUTES

1. Draft Minutes of November 13, 2019, Regular Meeting

Chair Blank proposed incorporating Commissioner Beer's written modification to the Minutes.

Commissioner Marston noted a contradiction in Mr. Cirino's statements on page 2 in that he prefers customers not bring hard liquor onboard but hard liquor is not allowed onboard. On page 3, Mr. Cosylion provided the parking standard, which does not account for passengers that utilize alternate transportation. She questioned whether the number of passengers is specifically based on the amount of parking.

Chair Blank advised that the vessel itself sets the passenger limit in this instance. The intention was to explain that there is sufficient parking for the maximum number of passengers allowed on the vessel.

Commissioner Scully moved to approve the draft Minutes of the November 13, 2019 meeting as amended. Commissioner Marston seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Blank, Vice Chair Cunningham, Commissioner Kenney, Commissioner Marston,
Commissioner Scully, Commissioner Yahn

Nays: None

Abstaining: None

Absent: Commissioner Beer

6) **PRESENTATIONS**

1. **Presentation on Draft Disposable Food Service Ware Ordinance**

The Water Quality/Coastal Tidelands Committee (WQCTC) has been reviewing the City's Municipal Code since September of 2019 to determine if the Code could be modified to provide additional regulations to improve the environment and water quality. This presentation will provide the Harbor Commission with an update of the work in progress.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Hoiyin Ip, Water Quality/Coastal Tidelands Committee, reported in 2017 the Water Board ordered all agencies to significantly reduce trash entering waterways through either trash capture or trash reduction. The City of Newport Beach has implemented trash capture measures and proposed bans on balloons, polystyrene foam, and plastics. The Harbor Commission should consider banning balloons and polystyrene foam in the Harbor as well.

Commissioner Kenney advised that he could support a ban on Styrofoam coolers and cups but not dock floats and mooring buoys.

Chair Blank indicated an ordinance and design standards require the encapsulation of polystyrene docks and floats.

Len Bose suggested a cruise from Newport Beach to San Diego to clean up Mylar balloons and using social media to promote clean-up efforts.

Pete Swift noted most encapsulated polystyrene floats are composed of bead Styrofoam, which is inexpensive and effective. A closed-cell Styrofoam that does not breakdown is available and could be included in the list of acceptable materials.

2. **Update on the Water Wheel**

The City has a robust water quality program that is overseen by the Public Works Department and the Water Quality/Coastal Tidelands Committee. In June of 2019, the City entered into an agreement with the State of California Natural Resources Agency for the Newport Bay Water Wheel Project. Public Works staff will provide a presentation on this project.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Senior Engineer John Kappeler reported the City installs approximately 435 screens on catch basins during dry months; inspects and cleans about 450 screens inside catch basins and 40 continuous deflative separation (CDS) units, cleans drainage channels and catch basins annually; removes debris from the Upper Bay; has installed six trash skimmers in the Harbor; and coordinates clean-up events. Newport

Beach, Costa Mesa, Santa Ana, Orange County Flood Control, and Orange County Public Works have collaboratively constructed the Santa Ana-Delhi trash diversion project. Senior Engineer Kappeler shared a video regarding a water wheel. Staff proposes to locate a water wheel in San Diego Creek. The Ocean Protection Council awarded the City a \$1.7 million grant to build a waterwheel. Social media and educational programs can be used to promote both the water wheel and water quality. Staff has completed preliminary engineering, environmental review, and a grant agreement. Staff hopes to present a consultant contract for detailed design to the Council on February 11 and to obtain permits in a year such that construction could begin in 2021. The total cost for a water wheel will be approximately \$2 million, and the estimate for annual operations and maintenance costs is \$25,000 to \$50,000. Staff has contacted upstream cities about a cooperative agreement to fund a water wheel and received positive feedback.

In reply to Commissioner Yahn's queries, Senior Engineer Kappeler indicated grant funds will be applied to the \$2 million project cost. The City has agreements with all Newport Bay watershed partners, and hopefully the cost of the water wheel can be added to the agreements.

Vice Chair Cunningham suggested during the upcoming eelgrass survey the contractor mark large trash items in the Harbor, and either City staff or a contractor remove the items.

Chair Blank concurred with the proposal of relocating the underwater clean-up event from Balboa Bay Club to Marina Park. In response to his question, Senior Engineer Kappeler advised that the water wheels in Baltimore are stationary.

7) PUBLIC HEARING

1. Residential Dock Reconfiguration at 117 North Bay Front

The applicant at 117 North Bay Front is proposing to reconfigure the residential dock in essentially the same orientation by shifting the structure to the south. The proposed float will not extend bayward any further than the existing float, and this dock is in an area where the harbor lines (bulkhead, pierhead and project) are not clearly defined. Because the applicant is proposing a different configuration within an area where the harbor lines are not defined, staff is unable to approve the project. Therefore, Council Policy H-1 directs the Harbor Commission to hold a public hearing for the proposed project. The applicant requests the Harbor Commission approve the proposed dock configuration.

Recommendation:

- 1) Conduct a public hearing; and
- 2) Find the Project exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of regulations, Title 14, Chapter 3; and
- 3) Approve the Project at 117 North Bay Front by making specific findings to allow the dock to be reconfigured pursuant to the provision in Council Policy H-1.

Public Works Administrative Manager Chris Miller reported the dock at 117 North Bay Front is landward of the bulkhead line. Normally, Council Policy H-1 deals with piers and floats bayward of the bulkhead line or the pierhead line. In addition, Council Policy H-1 does not allow staff to approve dock projects when the proposed reconstruction is not like-for-like. On Balboa Island, the size of a proposed dock cannot exceed the size of the existing dock. The existing dock's size is 410 square feet with a 20-foot gangway. Current standards require a 24-foot gangway. The City approved the existing dock. The proposed dock size is 410 square feet with a 24-foot gangway; however, the proposed dock is shifted to the south of the existing dock. The proposed float will not extend past the existing dock. The proposed dock does not adversely affect neighbors or the channel. In order to approve the project, the Harbor Commission must make certain findings. Notice of the project has been sent to all properties located within a 300-foot radius of the project.

In response to Commissioner Kenney's question, Public Works Administrative Manager Miller advised that staff has not received any public comment regarding the project.

Vice Chair Cunningham indicated he has viewed the site, and the proposed project appears feasible. His only concern is a large boat at the dock will block the channel.

Chair Blank explained that the prolongation of the property line will limit the size of the boat on the proposed dock; therefore, he was not concerned about a large boat obstructing the channel. A 42-foot boat, if it is narrow, may fit on the proposed dock.

Commissioner Scully remarked that the gangway was submerged during his visit to the site and asked if the proposed gangway would be higher. Public Works Administrative Manager Miller presumed the proposed gangway would be the same height as the existing gangway because the height of the proposed pier would be the same as the bulkhead cap.

Vice Chair Cunningham suggested the property owner will have to dredge the site.

Pete Swift of Swift Slip Dock and Pier Builders, Inc. and the applicant's agent, reported the plan is to place a boat on the east side of the dock adjacent to the neighbor's large boat. On that side of the proposed dock, the distance is 19 feet to the property line. The height of the gangway will be increased.

In answer to an unidentified speaker's question, Mr. Swift advised that the property owner plans to use the dock for a boat with a 14-foot beam.

Jim Mosher noted Policy H-1 concerns piers that extend beyond the pierhead line, but that is not the case for the project. The final paragraph of Policy H-1 indicates the circumstances under which staff may not approve a project but does not indicate the body that can approve a project.

Commissioner Kenney moved to approve the project at 117 North Bay Front based on staff's recommended findings for the project and CEQA compliance. Vice Chair Cunningham seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Blank, Vice Chair Cunningham, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn
Nays: None
Abstaining: None
Absent: Commissioner Beer

8) CURRENT BUSINESS

1. Harbor Commission 2020 Objectives

The Harbor Commission has completed a number of Objectives since the last full update of the Objectives in 2018. At the October 9, 2019 meeting, the Harbor Commission created a subcommittee to review the current updated Objectives. They were tasked with adding to, deleting, and modifying the current Objectives for the Council consideration in January 2020. The Subcommittee for Objective Review will report their recommendations for consideration of the full Harbor Commission.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15050(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15374) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly; and
- 2) Review and approve updates to the Harbor Commission Objectives for 2020 and recommend that they be forwarded to the City Council for consideration.

Vice Chair Cunningham proposed "Current Objectives Dated January 8, 2020" as the title because the Objectives may extend into 2021. In late 2019, the Harbor Commission supported rewriting the Functional Areas and using broader descriptions. Proposed Functional Areas are Harbor Operations, Harbor Viability, Harbor Infrastructure, Harbor Stakeholders, and Harbor Vision. The subcommittee proposed expanding the description of Harbor Operations and Harbor Infrastructure.

Chair Blank noted Commissioners Marston and Yahn have been omitted from Functional Area assignments and offered to assign Harbor Vision or Harbor Viability to either of them.

Commissioner Yahn advised that Commissioners could work on Objectives in which they are interested even though they are not assigned to the Objectives. Vice Chair Cunningham added that Commissioners have not been assigned to some Objectives due to the high level of staff support for the Objectives. The Functional Area Chair will work with staff on those Objectives.

Vice Chair Cunningham reviewed the Objectives of Functional Area 1.

Chair Blank indicated the Chair of each Functional Area will support the committees working on the Objectives as needed, even though the Chair is not assigned to any of the Objectives.

Vice Chair Cunningham reviewed the Objectives of Functional Area 2.

In response to Assistant City Manager Carol Jacobs' query, Chair Blank stated he was originally assigned to Objective 5. Assistant City Manager Jacobs suggested any action on the Objectives include the assignment of Commissioners to committees.

Chair Blank proposed moving Objective 5 from Functional Area 2 to Functional Area 5.

Commissioner Marston questioned whether Lower Castaways has been designated a park. Vice Chair Cunningham proposed striking the word park from the description of Objective 5.

In reply to Commissioner Marston's question, Vice Chair Cunningham advised that Objectives overlap Functional Areas.

Commissioners agreed to moving Objective 2.5 to Functional Area 5.

Vice Chair Cunningham reviewed the Objectives of Functional Areas 3, 4 and 5. He explained the rationale for assigning Commissioner Kenney to Objective 5.1.

Commissioner Kenney proposed assigning Commissioner Scully to Objective 5.1 as well.

Vice Chair Cunningham shared the need for Commissioners to work with City departments and bodies and to be aware of topics that City bodies are considering. Commissioner Kenney added that some topics under discussion at other City bodies may not fall into a specific Objective, in which case the Harbor Commission Chair should address the topics with the bodies. Chair Blank suggested Commissioners build rapport with Planning Commissioner Rosene, who is a Harbor user.

In reply to Commissioner Kenney's questions, Chair Blank reported the Functional Area Chairs will not necessarily be the leads for the Objectives. The Functional Area Chairs will manage the Functional Area, support the committees for each Objective as needed, and address general questions and comments about the Functional Area.

Assistant City Manager Jacobs noted Chair Blank has worked on Title 17 revisions for the past year but is not assigned to Objectives 1.1 and 1.2. Chair Blank concurred that he should be assigned to Objective 1.1. Commissioner Scully agreed to Chair Blank replacing him on Objective 1.2.

Commissioner Kenney advised that proposed Title 17 revisions are scheduled for Council action on January 28. Hopefully, proposed Marine Activities Permit (MAP) revisions will follow soon afterwards. Therefore, the assignments for Objectives 1.1 and 1.2 could remain as proposed.

Chair Blank related that, if the Council adopts the proposed Title 17 revisions, they will not become effective until perhaps the end of March.

Vice Chair Cunningham clarified that Chair Blank will be assigned to Objective 1.1 and will replace Commissioner Scully on Objective 1.2.

Mr. Pringle suggested stakeholders may need help in meeting the requirements of the MAP rather than completing the MAP with respect to Objective 4.1. Objective 4.1 could include strategic statements.

Jim Mosher recommended general questions for Functional Area Chairs occur during Harbor Commission meetings to prevent any violation of the Brown Act. The Water Quality Committee's only function is to improve the quality of water in the Bay.

Chair Blank clarified his comments regarding the Functional Area Chairs as they will address questions and comments from people and entities not affiliated with the Harbor Commission.

Commissioner Kenney suggested revising Objective 4.1 to state "... to complete and meet the newly defined Marine Activities Permit program."

Chair Blank recommended the Objective 4.1 committee create a strategic Objective for the MAP in the future.

Commissioner Yahn moved to approve the Harbor Commission Objectives Dated January 8, 2020, as modified during the meeting and recommend that they be forwarded to the City Council for consideration. Commissioner Scully seconded the motion. The motion carried by the following roll call vote:

Ayes: Chair Blank, Vice Chair Cunningham, Commissioner Kenney, Commissioner Marston, Commissioner Scully, Commissioner Yahn
Nays: None
Abstaining: None
Absent: Commissioner Beer

In reply to Chair Blank's query, Assistant City Manager Jacobs reported she would attempt to place the Objectives on the Council's January 28 agenda. The item could be placed on the Council's consent calendar. Vice Chair Cunningham preferred an action item and offered to seek the Mayor's opinion during their meeting the following week.

2) Harbormaster Update – December 2019 Activities

The Harbormaster is responsible for the management of the City's mooring fields, the Marina Park Guest Marina and Harbor on-water code enforcement activities. This report will update the Commission on the Harbor Department's activities for December 2019.

Recommendation:

- 1) Find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- 2) Receive and file.

Harbormaster Kurt Borsting reported the Harbor Department conducted a pre-event route inspection, scheduled additional staff resources, and participated in the Christmas Boat Parade. Marina Park guest slips were filled throughout the week of the Boat Parade, and additional bookings were accommodated on

offshore moorings. Marina Park hosted the grand marshal vessel during the Boat Parade and a VIP event the first night of the Boat Parade. On land, the Harbor Department hosted a kids' craft table. An after-action report has been created and contains recommendations for future events. The California Division of Boating and Waterways awarded a grant of \$175,000 to the Harbor Department for the removal of derelict vessels and the Vessel Turn-In Program. Upon Council approval, the grant will be executed, and the funds will be available to the Harbor Department. The prior grant provided \$125,000 for the removal of derelict vessels. Following the December 26 storm, staff provided public assistance and recovered drifting vessels.

Chair Blank was pleased with the Harbor Department statistics.

In response to Commissioners' questions, Harbormaster Borsting advised that portable pumps were used to dewater vessels. Under a contract with the City, Sea Tow can provide assistance if needed. Staff conducted an assessment of bilge water during dewatering to ensure pollutants were not discharged into the Harbor. The new vessels are performing well, and staff appreciated the cabins during the storms. The vessels appear to be utilizing more fuel than the older boats; therefore, there may be additional operating expenses. During the 2018 Boat Parade, guest moorings caused some congestion, but the matter was resolved prior to the 2019 Boat Parade. The 2019 staffing model did not allow staff to participate in the Sheriff's Department's nightly meetings. Those meetings are important for staff, and hopefully staff can participate in them in 2020. Recommendations for recreation partners include the addition of food trucks and seating.

Chair Blank recommended Harbormaster Borsting caution staff to ensure vessels are sound before boarding to dewater them.

9) COMMISSIONER ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Vice Chair Cunningham announced Mayor Pro Tem Avery, Council Member Duffield, and he would travel to Washington, D.C. the week of January 20 to discuss funding of deep-water dredging projects. The new hydraulic dredger is currently pumping sand to Little China Cove and will pump sand to Pirate's Cove Beach next.

In reply to Commissioner Kenney's questions, Vice Chair Cunningham advised that a private contractor is handling the pumping. The contractor will dredge private docks.

Commissioner Kenney reiterated that the Council will consider proposed revisions to Title 17, except for Section 17.10, on January 28.

10) QUESTIONS AND ANSWERS WITH STAFF ON HARBOR-RELATED ISSUES

In response to Commissioner Kenney's inquiries, Assistant City Manager Jacobs reported the *Wild Wave* case has been continued to February 13. The trial may be held on that date. Harbormaster Borsting advised that Code Enforcement Officer Cosylion and he are working with the owner of *Dire Straits*, which may be a candidate for the Vessel Turn-In Program. The vessel is located in the A Field.

Chair Blank indicated most of the superstructure and the swim step have been removed from *Dire Straits*. Without the swim step, the vessel has no means of propulsion.

11) MATTERS WHICH COMMISSIONERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT (NON-DISCUSSION ITEM)

Vice Chair Cunningham reported the Harbor attendance study may be ready for review at the February meeting.

Chair Blank requested updates from Objectives committees.

12) DATE AND TIME FOR NEXT MEETING: Wednesday, February 12, 2020 at 6:30 p.m.

11) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:24 p.m.